

SUPPORTING STATEMENT
National Credit Union Administration

**Federal Credit Union Occupancy, Planning, and Disposal of
Acquired and Abandoned Premises**
12 CFR Part 701.36
OMB No. 3133-0040

SUMMARY

NCUA published a proposed rule on April 27, 2016, at 81 FR 24738, under 12 CFR Part 701, amending Federal Credit Union Occupancy, Planning and Disposal of Acquired and Abandoned Premises (occupancy rule). The rule amended §701.36 by eliminating the requirement for a board resolution containing definitive plans for full occupancy of a premises acquired for future expansion. The rule was adopted and a final rule was published on December 21, 2016, at 81 FR 93577.

A. JUSTIFICATION

1. Necessity of Information Collection

Section 107(4) of the Federal Credit Union Act states in part that a federal credit union (FCU) shall have the power to purchase, hold, and dispose of property necessary or incidental to its operations. Section 701.36 of NCUA Rules and Regulations implements this statute and includes an information collection. Included within the rule is the opportunity for credit unions to apply for a waiver to any provision if they cannot comply with the requirements of the rule. NCUA reviews the information contained within the waiver to determine if the proposed action would adversely affect the financial soundness of the credit union or pose a risk to the National Credit Union Share Insurance Fund (NCUSIF). The ability to review actions which are not in compliance with Part 701.36 allows NCUA to provide appropriate oversight of the credit union and prevent risk to NCUSIF. The types of waiver covered under this section of the proposed rule are:

- *Waiver of requirement for partial occupation.* The occupancy rule requires FCUs that acquire realty for future expansion but fail to at least partially occupy it within three years, or within six years for unimproved real property, to obtain a waiver from NCUA. This rule becomes operative only when FCUs decide to acquire real estate and not partially occupy it within the stated period of time. This part of the information requirement is submitted for approval. The Federal Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold and lease realty indefinitely for unauthorized purposes.
- *Waiver of requirement to dispose of abandoned property.* The occupancy rule requires FCUs that abandon property and fail to complete the sale of the property within 5 years of abandonment to seek written approval from NCUA. This rule becomes operative only when FCUs decide to abandon property and not complete the

sale of the abandoned property within the stated period. The Federal Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold property indefinitely for unauthorized purposes.

- *Waiver of prohibited transaction.* The occupancy rule requires FCUs to obtain written approval from NCUA before acquiring or leasing, for one year or longer, realty from prohibited parties. This rule becomes operative only when FCUs decide to acquire real estate from a prohibited party. This part of the information requirement is submitted for approval. The Federal Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold or lease realty for unauthorized purposes.

2. Purpose and Use of the Information Collection

There are three parts to the collection associated with the rule: waiver of requirement for partial occupation, waiver of requirement to dispose of abandoned property and waiver of prohibited transactions. NCUA reviews the information contained within the waiver to determine if the action would adversely affect the financial soundness of the credit union or pose a risk to the National Credit Union Share Insurance Fund (NCUSIF). NCUA responds to waivers by either granting the request to operate outside of Part 701.36, by denying the request or otherwise compromising to meet the needs of the credit union without raising safety and soundness concerns.

3. Consideration Given to Information Technology

The information collection associated with Part 701.36 of NCUA Rules and Regulations would not employ information technology, beyond permission submission via electronic mail. The waiver requirement is fundamentally manual, since the waiver request must be specific and unique to the requestor.

4. Duplication

There is no duplication of information collection. The information collection required to comply with § 701.36 is specific to the rule. The waiver process comprising the information collection would not be applicable to any other information collection process.

5. Effect on Small Entities

The collection of information may impact small businesses or other small entities. As of December 31, 2015, 97 percent of federally chartered credit unions held less than \$1 billion total assets, 79 percent were below \$100 million in total assets, and 33% held less than \$10 million in total assets. These entities would only be required to submit information if they made strategic decisions to operate outside of current occupancy guidelines and were required to draft a plan or submit a waiver to NCUA. Therefore, if the entity operates within guidelines, there are options to avoid information collection. The majority of credit unions, large and small, would not be expected to submit

information each year. NCUA estimates that significantly fewer than 1% of credit unions would request a waiver to any of the three requirements in any particular year.

6. Consequences of Not Conducting Collection

These requirements are necessary to allow the NCUA to supervise federal credit unions for compliance with the Federal Credit Union Act (FCU Act), which authorizes federal credit unions to purchase, hold, and dispose of property necessary or incidental to its operations. If the information is not collected, the consequence would be that NCUA would be unable to assess compliance with the FCU Act.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

A proposed rule was published April 27, 2016, at 81 FR 24738, soliciting comment on the proposed revisions to the information collection requirements associated with this rule.

The large majority of commenters strongly supported removing the full occupancy requirement, thus eliminating the need for a waiver request. However, two commenters opposed this particular aspect of the proposed rule. Commenters that disagreed with the elimination of the full occupancy requirement expressed concern that FCUs will be more likely to venture into real estate activities that are beyond the scope of credit union operations envisioned by Congress.

In the proposed rule, the Board emphasized that maintaining the requirement that an FCU must partially occupy real property it obtains will reduce the likelihood and opportunity for speculative investments. The Board reaffirms this position and also notes that NCUA will diligently oversee FCUs' activities in this area to ensure that FCUs are not engaging in speculative investments or other real estate activities that are not permitted under the Act. Any FCU in violation of these requirements could be subject to all administrative remedies available to the agency. Therefore, the Board does not believe this final rule will result in FCUs operating beyond the scope of their authority as Congress provided for in the Act.

NCUA published the final rule on December 21, 2016, at 81 FR 93577, adopting the proposed amendments.

9. Payment or Gift

There is no payment or gifts provided to respondents to this information collection.

10. Confidentiality

Credit union examination reports and any documents related thereto are exempt from the Freedom of Information Act disclosure, pursuant to exemption 8, 5 U.S.C. 552(b)(8).

11. Sensitive Questions

No questions of a sensitive nature are asked. No personally identifiable information (PII) is collected.

12. Burden of Information Collection

- Annualized hour burdens for collections of information.

Information Collection Activity	Number of Respondents	Frequency of Response (Annual (1), Quarterly (4), etc.)	Number of Responses	Burden Hours per Response	Annual Hourly Burden
	(A)	(B)	(C)	(D)	(E)
1. <i>Waiver of requirement for partial occupation</i>	15	1	15	15 Hours	225 Hours
2. <i>Waiver of requirement to dispose of abandoned property</i>	10	1	10	10 Hours	100 Hours
3. <i>Waiver of prohibited transactions</i>	3	1	3	10 Hours	30 Hours
Total (Sum)	28		28		355 Hours

- Annualized cost to respondents.

Information Collection Activity	Annual Hourly Burden (see 12 above, item E)	Hourly \$ Rate per Response	Total \$ Amount
1. <i>Waiver of requirement for partial occupation</i>	225 Hours	\$ 31.89	\$ 7,175.25
2. <i>Waiver of requirement to dispose of abandoned property</i>	100 Hours	\$ 31.89	\$ 3,189.00
3. <i>Waiver of prohibited transactions</i>	30 Hours	\$ 31.89	\$ 956.70
Total (Sum)	355 Hours	\$ 31.89	\$ 11,320.95

13. Capital start-up costs and operation and maintenance costs.

There are no capital start-up or ongoing operation and maintenance costs associated with this information collection.

14. Costs to Federal Government

The NCUA would likely spend an average of 8 man-hours processing each waiver request and 2 man-hours reviewing that processing. The wage rate is about \$55 an hour. The total NCUA cost for each waiver request is then 28 x 8 x \$55 plus 28 x 2 x \$55, or \$15,400.

15. Changes in Burden

The program change resulted in a reduction in overall burden by 225 hours. The removal of the provision of §701.36, which required a plan for full occupancy if a federal credit union cannot fully occupy a premises acquired for future expansion within one year, removes the need for a waiver.

16. Information Collection Planned for Statistical Purposes

The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The waivers are triggered by specific events in which FCUs generate their requests as prescribed by regulation. If the expiration date of the OMB approval is contained in regulations, it may be confusing to respondent believing that a regulation may have sunset.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.